



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2021-0855; FRL-8941-01-R3]

Air Plan Approval; Virginia; Negative Declaration Certification for the 2015 Ozone National Ambient Air Quality Standard for the 2016 Oil and Natural Gas Control Techniques Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. This revision provides Virginia's determination for the 2015 Ozone national ambient air quality standards (NAAQS), via a negative declaration, that there are no sources within the Northern Virginia volatile organic compound (VOC) Emissions Control Area subject to EPA's 2016 Oil and Natural Gas control techniques guidelines (2016 Oil and Gas CTG). The negative declaration covers only the 2016 Oil and Gas CTG and asserts that there are no sources subject to this CTG located in the Northern Virginia VOC Emissions Control Area. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2021-0855 at <https://www.regulations.gov>, or via email to gordon.mike@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or

other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Om P. Devkota, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2172. Mr. Devkota can also be reached via electronic mail at Devkota.om@epa.gov.

SUPPLEMENTARY INFORMATION: On August 9, 2021, the Virginia Department of Environmental Quality (VADEQ) submitted the negative declaration for the 2016 Oil and Gas CTG for the 2015 ozone NAAQS as a revision to the Virginia SIP.

I. Background

The CAA regulates emissions of nitrogen oxides (NO_x) and VOCs to prevent photochemical reactions that result in ozone formation. Reasonably available control technology (RACT) is a strategy for reducing NO_x and VOC emissions from stationary sources within areas not meeting the NAAQS for ozone. EPA has consistently defined “RACT” as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility.

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include RACT, including RACT for existing sources of emissions. Section 182(b)(2)(A) of the CAA

requires that for areas designated nonattainment for an ozone NAAQS and classified as moderate, states must revise their SIP to include provisions to implement RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment. Section 182(b)(2)(B) requires the same for CTGs issued before November 15, 1990. CAA section 182(c) through (e) applies this requirement to states with areas designated nonattainment for an ozone NAAQS classified as serious, severe, and extreme.

The CAA also imposes the same requirement on states in Ozone Transport Regions (OTR). Specifically, CAA section 184(b) provides that states in an OTR must revise their SIP to implement RACT with respect to all sources of VOC in the OTR covered by a CTG document issued before or after November 15, 1990, even for areas designated attainment within the OTR. CAA section 184(a) establishes a single OTR comprised of 11 eastern states and the Consolidated Metropolitan Statistical Area (CMSA) that includes the District of Columbia. Portions of Northern Virginia are in the CMSA and therefore the OTR. The rest of Virginia is not in the OTR. The Virginia portion of the OTR includes the following areas: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City. Collectively, these areas will be referred to as the “Northern Virginia VOC Emissions Control Area” or the “Northern Virginia area.” Finally, Section 182(f) requires that plan provisions required under subpart 4 of part D of title I of the CAA, which includes sections 182 through 184, for major sources of VOC shall also apply to major stationary sources of oxides of nitrogen in ozone nonattainment areas.

CTGs and alternative control techniques (ACTs) form important components of the guidance that EPA provides to states for making RACT determinations.¹ CTGs are used to presumptively define VOC RACT for applicable source categories. States subject to RACT

¹ A complete list of EPA-issued CTGs and ACTs with links to each CTG or ACT can be found at <https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques>.

requirements are required to adopt controls that are at least as stringent as those found in the CTG either by adopting regulations or issuing single-source orders or permits that outline what the source is required to do to meet RACT. On October 27, 2016 (81 FR 74798), EPA published in the *Federal Register* the “Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry.” This 2016 Oil and Gas CTG provided information to state, local, and tribal air agencies to assist in determining RACT for VOC emissions from select oil and natural gas industry emission sources. The 2016 Oil and Gas CTG replaces an earlier 1983 CTG entitled “Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants. December 1983.” EPA-450/3-83-007 (1983 CTG) 49 FR 4432 (February 6, 1984). 2016 Oil and Gas CTG, p. 8-1.

On March 6, 2015 (80 FR 12263), EPA issued a final rule entitled “Implementation of the 2008 national ambient air quality standards for Ozone: State Implementation Plan Requirements” (2008 Ozone Implementation Rule).² In the preamble to the final rule, EPA makes clear that if there are no sources covered by a specific CTG source category located in an ozone nonattainment area or an area in the OTR, the state must submit a negative declaration for that CTG. See 80 FR 12263, 12278. On December 6, 2018 (83 FR 62998), EPA issued a final rule entitled “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements” (2015 Ozone Implementation Rule).³ In the 2015 Ozone Implementation Rule, EPA retained without significant revision the majority of existing implementing regulations associated with the 2008 ozone NAAQS for the purposes of implementing the 2015 ozone NAAQS. See 83 FR 62998. If no source for a specified CTG exists in a state, the state must submit, as a SIP revision, a negative declaration documenting this fact. On August 9, 2021, VADEQ submitted for approval into the Virginia SIP

² See Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards at 40 CFR 51.1100 through 51.1119.

³ See Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards at 40 CFR 51.1300 through 51.1319.

a negative declaration for the 2016 CTG for the Oil and Natural Gas Industry for the 2015 ozone standards.

II. Summary of SIP Revision and EPA Analysis

The 2016 Oil and Gas CTG divides the industry into four segments: production, processing, transmission and storage, and distribution. The transmission and storage sector includes compressor stations, pipelines and storage facilities. The distribution sector is the final step in delivering natural gas to customers and includes gas mains and service pipelines. See CTG p.3-1; see also CTG pp.3-1 through 3-3 for a brief explanation of each segment. However, not all four segments of the industry are subject to the requirements of the CTG. The CTG covers select sources of VOC emissions in the onshore production and processing segments of the oil and natural gas industry (i.e., pneumatic controllers, pneumatic pumps, compressors, equipment leaks, fugitive emissions) and storage vessel VOC emissions in all segments (except distribution) of the oil and natural gas industry. These sources were selected for RACT recommendations because current information indicates that they are significant sources of VOC emissions. CTG p.3-5. A summary of the oil and natural gas emission sources and recommended RACT for those sources is provided in Table 1 of the CTG document, on pages 3-6 through 3-8.

According to Virginia's August 9, 2021 submittal, VADEQ conducted a review of potential sources subject to the 2016 Oil and Gas CTG and found that there are no sources located in the Northern Virginia area subject to the terms of this CTG for purposes of the 2015 ozone NAAQS. VADEQ used several methods to determine whether there were any sources subject to this CTG in the Northern Virginia area. VADEQ consulted the Department of Mines, Minerals, and Energy (DMME) Division of Gas and Oil (DGO) database, which showed that there are no active wells in the Northern Virginia area. No drilling permits have been issued in the area since 1991. VADEQ also consulted the Comprehensive Environmental Data System (CEDS), which is the air regulatory registration database for the jurisdictions comprising the

Northern Virginia VOC Emissions Control Area (*i.e.*, the Northern Virginia area). As explained in the SIP submission, facilities must register in this database all units subject to any applicable regulation in the Regulations for the Control and Abatement of Air Pollution, any facilities with the potential to emit (PTE) at least 25 tons per year (tpy) of VOC or 40 tpy of NO_x, and any facility making a change with a PTE of at least 10 tpy VOC or NO_x. The CEDS also has registration and reporting requirements for facilities emitting much lower levels of VOC. After consulting CEDS, VADEQ found that no natural gas processing or storage facilities are located in the Northern Virginia area. The details concerning VADEQ's analysis are on page 2 of Virginia's submittal.

Notwithstanding VADEQ's finding that there are no VOC sources in the Northern Virginia area subjected to RACT by the 2016 Oil and Gas CTG, VADEQ identified facilities in Northern Virginia defined by the 2016 Oil and Gas CTG as part of the oil and natural gas industry. Specifically, VADEQ identified certain natural gas compressor stations in the Northern Virginia area, but determined that these are "downstream" of the point of custody transfer to the natural gas transmission and storage segment. That is, these compressor stations are in neither the production nor processing segment of the industry. Compressor stations located in the transmission and storage segment of the oil and gas industry are not subject to any RACT requirements specified by the 2016 Oil and Gas CTG. See CTG, p. 3-7. However, if these compressor stations meet the VOC or NO_x emission thresholds to be considered major sources of VOC or NO_x for a moderate ozone nonattainment area, these sources will be subject to a major source RACT determination under Section 182(b)(2)(C) of the CAA.

III. Proposed Action

EPA's review of this material indicates that the August 9, 2021 submittal meets CAA requirements and that VADEQ's analysis adequately demonstrates that there are no affected sources located in the Northern Virginia area subject to the 2016 Oil and Gas CTG source categories. Therefore, EPA is proposing to approve Virginia's August 9, 2021 negative

declaration SIP submittal as a revision to the Virginia SIP. EPA is soliciting public comments on Virginia's negative declaration, including the adequacy of VADEQ's search and analysis of the CTG applicability criteria. Comments concerning the adequacy of the 2016 Oil and Gas CTG itself are not germane to this action and will not be considered. Relevant comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.11198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.11198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a

manner that is no less stringent than their Federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided

that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has

jurisdiction. As such, EPA's proposed approval of Virginia's SIP revision certifying the negative declaration for the 2016 Oil and Gas CTG does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

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Region III.

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